

REMARKS

Reconsideration of the application as amended herein is respectfully requested.

A. Drawing, Specification and Claim 14 Objections

The drawings, the specification and claim 14 as objected to by the Examiner have been corrected by the amendments herein as suggested by the Examiner. However, with regard to the Examiner's objection concerning the second averager, Applicant submits that the structure of this device is already depicted in the drawings. In this regard, FIG. 2 includes a microprocessor 40. To the extent that the specification indicates that the baseline pressure signal Pb may be calculated in a microprocessor 40, (specification, p. 6, lines 16-17) and the calculation of Pb involves the calculation of a short and a long term average, (specification, p. 6, line 26 to p. 7, line 2), the drawing requirements are satisfied by illustration of the microprocessor 40 of FIG. 2.

B. Claim Rejections under 35 U.S.C. § 112

The Examiner has rejected claims 6-13, 23 and 24 for insufficient antecedent basis with regard to the terms "said output signal" and "said duration". Claims 6 and 23 have been amended to address the rejections. It is submitted that the claims now satisfy 35 U.S.C. § 112.

C. Claim Rejections under 35 U.S.C. § 102

The Examiner has rejected claims 1-17, 19, 20 and 24-29 under 35 U.S.C. § 102(b) as being anticipated by the patent to Sullivan et al, U.S. Patent No. 5,246,995. For the following reasons, applicant requests that the Examiner withdraw the rejection.

1. Independent Apparatus Claims 1, 6 and 31 and dependents

It is the Examiner's position that independent apparatus claims 1 and 6 are disclosed by Sullivan et al. In this regard, the Examiner has ignored certain "adapted to" functional language arguing that an apparatus claim is defined by what a device is, not what it does. Applicant agrees that an apparatus claim must distinguish the prior art by structure, but Applicant submits that the Examiner has overlooked that functional language cannot be ignored where the functional language of a device implies structure. The last paragraph of 35 U.S.C. § 112 specifically provides for claims defining a device by function without expressing specific structure. 35 U.S.C. § 112, last paragraph. In this regard, a claim does not need to expressly use the term "means" to be interpreted as a means plus function claim under § 112. *Ex parte Staneley*, 121 USPQ 621 (Bd. App. 1958) (The term "device" coupled with a function is sufficient to define a limitation within the meaning of § 112, last paragraph.); see M.P.E.P. §

2181. Applicant submits that a “circuit” being “adapted to” is sufficient to invoke the means-plus-function interpretation of § 112. See *De Graffenreid v. United States*, 16 USPQ2d 1321 (Ct. Cl. 1990) (means and “adapted to” language denotes structure under § 112). Furthermore, where such a circuit means includes a computer or processor, the Examiner cannot ignore the control instructions that are associated with programmed functions that will denote patentable structure. *In re Alappat*, 33 F.3d 1526, 1545, 31 USPQ2d 1545, 1558 (Fed. Cir. 1994) (“We have held that ... programming creates a new machine, because a general purpose computer in effect becomes a special purpose computer once it is programmed to perform particular functions pursuant to instructions from program software.”) Nevertheless, for purposes of expediting the application process in a manner consistent with the PTO’s Patent Business Goals (PBG), 65 Fed. Reg. 54603 (Sept. 8, 2000), Applicant has now amended the claims to include the term “means.” For these reasons, Applicant submits that the functional language of the claims must be given patentable weight.

Accordingly, giving the means-plus-function limitations of the claims their due consideration, the prior art patent to Sullivan et al does not anticipate the inventions defined in independent claims 1, 6 and 31. As relied upon by Examiner, the prior art device of Sullivan et al. does not disclose all of the elements of these independent claims. While the Sullivan et al. patent does disclose a device that records pressure signals, and the device does adjust the delivered pressure to be within an appropriate pressure treatment range, significantly the Sullivan et al. device does not disclose a display adjusting circuit means adapted to restrict a respiratory signal within a predetermined display range in response to a first average. Once the treatment pressure has been adjusted in the Sullivan et al system, the device only records the pressure signals. The reference does not teach or suggest a device in which a respiratory signal can or will be adjusted to restrict it to a predetermined display range in response to an average. Accordingly, applicant requests that the Examiner withdraw the rejections of independent apparatus claims 1 and 6, and their respective dependent claims 2-5 and 7-13.

For similar reasons, Applicant also requests that the Examiner allow independent apparatus claim 31 and its dependent claims 32-34. Claim 31 defines a device with programmed control instructions to control adjusting steps for restricting a presentation of a respiration signal within a predetermined display range by generating a baseline signal from at least one average of the pressure signal. The Sullivan et al reference does not teach or suggest such a device.

2. Independent Method Claims 14 and 26 and dependents

Independent method claims 14 and 26 also define subject matter that is neither

disclosed nor suggested by the Sullivan et al reference. Claim 14 defines a method including the step of adjusting the parameter based on a baseline signal to generate a respiration signal within a predetermined display range based on an average value of the respiration signal. This display related adjustment is not disclosed in the reference device of Sullivan et al. As previously noted, the Sullivan et al device, in recording the pressure signals for later review, does not adjust the pressure signals to restrict them to a display range as claimed by the Applicant. Similarly, claim 26 defines the step of automatically adjusting a presentation of said parameter based on a baseline signal to generate the respiration signal within said predetermined dynamic range of an output display unit. This display adjustment step, to be distinguished from a step of adjusting treatment pressure, is not disclosed or suggested in the patent to Sullivan et al. Accordingly, Applicant requests that the Examiner withdraw the rejection of claims 14 and 26.


D. Rejections under 35 U.S.C. § 35

The Examiner has rejected dependent claims 18, 21-23 and 30 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al in view of U.S Patent no. 4,957,107 to Sipin. Applicant submits that in light of the above comments, the Examiner's rejection of claims under 35 U.S.C. § 103(a) should be reconsidered. The cited references neither suggest nor teach the combination of display adjustment elements as claimed by Applicant.

Accordingly, Applicant submits that the current application claims novel and non-obvious subject matter and is in condition for allowance. Early and favorable allowance is therefore requested.

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